

PART 8

REQUIRED SOURCES OF SUPPLIES AND SERVICES

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SUBPART 8.6 - ACQUISITION FROM FEDERAL PRISON INDUSTRIES, INC.

8.600-90 Definitions.

"Current market price (CMP)," as used in this subpart, means the actual current price for purchase of the item in the competitive market place in the quantities normally bought and sold and at customary terms and conditions. If actual sales prices are unavailable or nonexistent, the CMP means a price which is estimated in a similar manner as prescribed in FAR 19.807(b) and (c) (but see restriction on price comparisons in FAR 15.805 -2(b)).

"Unrestricted," as used in this subpart, refers to the portion of the acquisition not purchased from FPI, whether or not a small business or labor surplus set -aside has been made.

8.602 Policy.

(a)(70) In no event shall a unit price higher than the highest award price as adjusted for applicable cost factors, be considered to be the current market price unless it is determined that the highest award price was the result of a distressed bid, or bidder's mistake, or that the award price was inflated because of Department of Defense requirements.

(a)(90) In addition to assuring that the award price to FPI does not exceed the current market price, the contracting officer shall:

(i) request FPI to furnish its cost estimate (FPI Form 73, Unit Cost Estimate) with supporting documentation (material quotes, etc) for all first time buys and whenever current actual market prices are unavailable or when there is basis for concern regarding an FPI quote,

(ii) consider requesting FPI to furnish its cost history (FPI Form 9, Production Order and Cost Sheet) for the most recently completed contract(s) for the item (if none, for the most comparable item), along with identification of any apparent errors.

(iii) obtain an independent cost/price analysis of purchases estimated to exceed (\$200,000 (15.805-1(b)(90)(1)(ii)) and other actions as deemed appropriate (see 15.805 -1(b)(90)(1)(ii) and 15.805-1(b)(90)(2)). Coordinate price or cost/price analyses (FAR/DFARS/DLAD 15.805 -2 and -3) performed on other large purchases with the cost and price analysis element,

(iv) establish prenegotiation objectives as appropriate considering whether the objective is based on pricing data or on cost data plus a weighted guideline profit analysis (see DFARS 215.972 for non profit organizations),

(v) negotiate with FPI to assure price reasonableness (see FAR 15.803(d), and that the price does not exceed the current market price. Elevate negotiation to higher levels of management as necessary.

(vi) document the price reasonableness determination in the contract file, and

(vii) refer instances of unreasonable price which cannot be corrected to a higher authority in accordance with FAR/DLAD 15.803(d). Include a price survey of other potential suppliers and a recommendation concerning whether a clearance request to purchase the item competitively is warranted and needed (FAR 8.605 and 8.606).

(a)(91) When the price comparison involves Government -furnished material or property (GFM or GFP), differences in transportation costs for the GFM or GFP shall be considered. Also consider differences in Government transportation costs of end items to the same destination points and any variations in the percentages of GFM usage and/or operating and maintenance costs of GFP.

8.604 Ordering procedures.

(b)(90) Contracts and orders to FPI shall be on an f.o.b. origin basis unless otherwise specified.

(c)(90) Ceiling priced awards.

(1) The clause at 52.208-9000, Price Adjustment on Federal Prison Industries, Inc. (FPI) contract/order, may be utilized only if (i) the contract/order will be issued to FPI at a fair and reasonable price that does not exceed the estimated current market price, (ii) the contracting officer completes action specified in 8.602(a)(90)(vii) and (iii) the chief of the contracting office determines in writing that ordering the urgently needed Schedule item cannot be further delayed and approves such award.

(2) After issuing a contract/order containing the clause at 52.208 -9000, the contracting officer shall brief the chief of the contracting office or designee of efforts to reach an agreement as to the current market price reduction applicable thereto. Agreements reached shall be confirmed by a revision to the contract/order stating the applicable price and removing the clause at 52.208-9000.

(3) Efforts to obtain agreement may continue up to the time of inspection and acceptance of the first delivery for payment. If agreement has not been reached by that time, the case shall be submitted by the chief of the contracting office (not delegable except that the Executive Director for Procurement at DSCR may further delegate this authority to the Deputy Executive Director for Procurement and the Chief, Base Support Division without power of redelegation.) to HQ DLA, ATTN: MMPPP, as unresolvable and shall contain a detailed explanation of the factors used in determining the current market price and/or reasonable price which were not acceptable to the FPI.

8.604-90 Pricing policies for awards to Federal Prison Industries, Inc. (FPI).

(a)(1) Prices in awards to FPI for the partial or total quantity of an acquisition shall not exceed current market prices.

(2) On acquisitions involving multiple awards to both commercial contractors and to FPI of a mandatory item, the current market price will be a price considered by the contracting officer to reflect current market levels but in no event a unit price higher than the highest award price made on the unrestricted portion adjusted for applicable cost factors, unless it is determined that the price was the result of a distressed bid, bidder's mistake, or inflated because of Department of Defense requirements. In awards involving multiple destinations, each destination, for purposes of determining the price to be paid FPI, shall be considered a separate award. The term "unrestricted" as used in this part refers to the portion of the acquisition not purchased from FPI whether or not a small business set -aside has been made.

(3) When a contract action involves allotment to FPI of the entire quantity of the required item and current market quotations are not available, prior contract prices (adjusted to reflect changes in market prices of components since the last contract and differences in any other cost factors, e.g., labor, operating supplies, employee fringe benefits) shall be used as the basis for determining the current market price.

(4) A quotation from FPI at or less than the determined current market price shall be accepted.

(5) Awards to FPI shall be on a free on board (f.o.b.) origin basis unless otherwise specified.

(6) Prices for FPI contracts shall be rounded off to the nearest mil.

(b) The cost of transportation of Government furnished property to both FPI and to commercial contractors shall be excluded. Differences in Government transportation costs of end items to the same destination point under FPI award and under awards to commercial contractors shall be included. Also, variation in the cost of Government furnished property, based on stated percentages of usage of Government-furnished property allowances, shall be included.

(c) Firm delivery orders shall be given to FPI promptly upon determination of the quantity to be awarded FPI. The following procedures are to be utilized in determining prices to be included on these delivery orders:

(1) When a concurrent commercial contract is being made, the price quoted by FPI shall be cited on the delivery order and the clause at 52.208-9000 shall be included in the order. In the event the current market price determined by the contracting officer under the "unrestricted" acquisition is lower than the quoted FPI price, adjustment shall be made to the lower price; provided, however, that in the time elapsed between the delivery order to FPI and the opening date on the "unrestricted" portion, there has been no significant change in market conditions. Should there have been a significant change in market conditions, the current market price for an FPI order will be determined under the provisions of subparagraph (a)(3) above.

(2) When the circumstances described in subparagraph (a)(3) above exist, immediate action shall be taken to determine the current market price. Should that price be lower than the quoted price, prompt contact shall be made by the most expeditious means with the FPI and the circumstances and factors used in the determination explained. Should an agreement not be reached as to the current market price within 5 consecutive days from the date of contact, the order shall be promptly issued on the basis of the current market price determined by the contracting officer, and the clause set forth at 52.208-9000, Price Adjustment on Federal Prison Industries, Inc. (FPI) Delivery Orders, shall be included on the FPI delivery order.

(3) After issuance of a delivery order containing the clause at 52.208-9000, every effort will be made by the contracting officer to reach an agreement as to the current market price applicable to the order. Agreements reached shall be confirmed by a revision to the delivery order stating the price applicable to the order, and rescission of the clause at 52.208-9000.

(4) Efforts to obtain agreement, to include exchange of data on which the current market price was based, may continue up to the time of inspection and acceptance of the first delivery for payment. If agreement should not be reached by that time, the case shall be submitted to HQ DLA, ATTN: MMPPP, as unresolvable and shall contain a detailed explanation of the factors determining the current market price which was not acceptable to the FPI.

8.605 Clearances.

(a)(90) The guidance at 8.706, 8.790, and 8.791 also applies, in general, to items that are on or are proposed for inclusion on the FPI Schedule of Products. Where the coverage refers to JWOD (NIB/NISH) agencies or the Committee, the term "FPI" is substituted therefore. Where it refers to the Procurement List, the term "Schedule of Products" will be substituted. To expedite the determination of FIP's capability and capacity to produce an item, a cooperative interface should be established between FPI's staff and Center technical staff.

(91) See 7.104 for guidance on industrial preparedness planning in connection with requirements that are being considered as an item of supply for FPI.

SUBPART 8.7 - ACQUISITION FROM NONPROFIT AGENCIES EMPLOYING PEOPLE WHO ARE BLIND OR DISABLED

8.702 General.

DLA policy is to cooperate fully with the Committee for Purchase from **People who are Blind or Severely Disabled** (the Committee) and its Central Nonprofit Agencies (CNAs), the National Industries for the Blind (NIB) and the National Industries for the Severely Handicapped (NISH), in their efforts to compete in the DLA CA program cost comparisons. This will include their

efforts to obtain information to determine if a workshop is capable of performing functions(s) scheduled for cost comparison under the CA program (FAR Subpart 7.3 and DFARS Subpart 207.3). This policy is supported by the Javits-Wagner O'Day Act (Public Law 92-28).

8.705-90 Requirements under the Commercial Activities (CA) Program.

Procedure. The procedures below shall be followed when a CNA advises that a workshop has expressed an interest in a requirement under the CA program.

(a) Information of public record, as well as that information normally provided other prospective contractors in the acquisition process, shall be provided to the CNA when requested. Such information shall be released by the contracting officer, or with the contracting officer's concurrence. In addition, because of the unique Committee procedures, it is essential that the CNA and the workshop be permitted to review those Performance Work Statements (PWSs) in which they have expressed an interest, as soon as they are approved. Consequently, at the CNA's request, a copy of the approved PWS and, when available, Department of Labor (DOL) wage determination rates applicable to the requested PWS, shall be provided to the CNA. To preclude the inadvertent release of the information contained in the PWS to unauthorized parties, PWS letters of transmittal shall include the following notice:

"The enclosed performance work statement (PWS) is being released at your request in advance of a formal acquisition procedure because of your indication that you wish to review the data to determine if a workshop could provide the service(s) under the Javits-Wagner-O'Day Act. Until the PWS is publicly released by the Government, it must not be distributed to other than authorized (insert as applicable: NIB employees under your control or supervision, NISH employees under your control or supervision, or the Committee)."

The letter of transmittal shall also advise the requesting activity that it should inform the contracting office, within 30 days of the date of transmittal, of its intent to take action to propose that the services covered by the PWS be added to the Procurement List.

(b) While the CNA or the Committee is reviewing the PWS and wage determination rates, action to prepare the CA solicitation shall proceed under established CA procedures (FAR Subpart 7.3 and DFARS Subpart 207.3 and DLA CAPLTR 5-82, 29 Oct 82).

(c) If the CNA advises that it intends to propose that the service(s) be added to the Procurement List, a solicitation shall not be publicly issued; however, a copy shall be issued to the CNA for the sole purpose of apprising the CNA of additional requirements contained in the solicitation with which the CNA would be required to comply and which might have an impact on the CNA's fair market price. Following such notification, the CNA will develop a proposed fair market price for the service(s). The contracting activity shall advise the CNA when the in-house cost estimate is completed and sealed. Upon receipt of this information, the CNA will transmit to the contracting activity and the Committee a copy of the fair market pricing package for review. The pricing package will include a price for the basic period and the specified number of option and/or multiyears. The contracting activity will review the proposed fair market price for performance of the service(s). The Committee staff will discuss the proposed price with the contracting activity to obtain its concurrence, if possible, before determining the fair market price. Individuals who have knowledge of the cost figures set forth in the Government in-house cost estimate shall not participate in the review of the fair market pricing package. (See FAR 7.304(d).)

(d) Under Committee procedures, within 60 days of receipt of the PWS and wage determination rates, or upon notification that the in-house cost estimate has been sealed, whichever occurs later, the CNA should provide the contracting office with the price proposal that it has submitted to the Committee. If by that time the contracting activity has not received a copy of the CNA price proposal, or the CNA has not informed the contracting office that the workshop is no longer interested in providing the service(s), the contracting officer should contact the Committee by telephone to obtain the status of the action. This request for status will be confirmed in writing by the contracting office. The Committee point of contact is the Executive Director of the Committee, telephone: (703) 603-7740. At that time, the Executive Director will either indicate when the service(s) are expected to be added to the Procurement List, or notify the contracting officer that action may be initiated by the Government to procure the service(s) from alternate sources. In the event mission requirements will not permit a delay, the solicitation may be issued to other sources under the CA procedures in FAR Subpart 7.3 and DFARS Subpart 207.3. The Committee and the CNA shall be advised by the contracting office in writing of its intent to issue a solicitation, along with supporting rationale.

(e) In the event the CNA advises that it does not desire to develop the services for addition to the Procurement List, the contracting officer shall proceed to issue the solicitation to other sources under the CA procedures in FAR 7.3 and DFARS 207.3.

(f) Upon receipt of the established fair market price from the Committee (transmitted upon addition of the service(s) to the Procurement List), the contracting officer will open the in-house estimate and proceed with the cost comparison as prescribed by FAR 7.306(b). If the

cost comparison process results in a decision to retain the service(s) in-house, the Committee price is of no consequence. The Committee and the CNA shall be advised of the results of the cost comparison by the contracting office.

8.706 Purchase Exceptions.

(a)(90) For items on the Procurement List, periodic reviews must be taken to ensure that surge capability remains available, in the quantity and within the delivery schedule required.

(91) When information clearly indicates that the nonprofit agency for an item on the Procurement List is not consistently meeting the Government's needs or will not be able to meet such needs, including surge capability, in the future, the contracting officer should request NIB or NISH to (1) grant a Purchase Exception to permit the item to be bought on a short-term basis from commercial sources; and/or (2) consider requesting that the Committee for Purchase from People Who are Blind or Severely Disabled add one or more additional nonprofit agencies to supply the item or delete all or part of the requirement for the item in question from the Procurement List. If the contracting officer is unable to reach agreement with NIB or NISH on the actions in (1) above, the issue should be elevated to the DLA Small and Disadvantaged Business Utilization Office (DDAS) for further action. Upon receipt of such request, DDAS will contact the committee and request that a purchase exception be granted expeditiously (e.g., within one day for critical items). In addition, DDAS will determine whether the issue should be forwarded to the committee requesting that they pursue one of the actions in (2) above.

8.790 Assessing Capability.

(a) Certain steps must be taken in assessing the capability of one or more nonprofit agencies proposed to become a new single source of supply under the JWOD (NIB/NISH) Program for an item. Contracting officers must ensure that the JWOD agency(ies) has sufficient capacity to meet the total requirement. If the entity(ies) lacks sufficient capacity to meet total requirements, the contracting officer should propose a different arrangement (e.g., one or more additional JWOD agencies should become involved or a portion (e.g., 40 percent) should be provided by commercial concerns)). When it is determined that the JWOD agency(ies) will not be able to meet the total requirements, DDAS should be advised so that the issue can be elevated to the Committee for Purchase from People Who are Blind or Severely Disabled prior to the item being added to the Procurement List.

(b) See 7.104 for guidance on industrial preparedness planning in connection with requirements that are being considered as an item of supply from a JWOD Agency.

8.791 Maintaining Existing Contractual Coverage.

(a) When an item is added to the Procurement List for single source provision by a JWOD agency(ies) that has not previously supplied the item, steps should be taken to ensure that adequate contractual coverage is maintained until the JWOD agency(ies) has proven it can meet the requirements. This is especially important in those instances where the entity is proposed to provide 100% of the requirement. As a routine part of any conversion process to a new single source, it is imperative that the issue of overlapping contractual coverage be examined and adequate interim open market support (e.g., through exercising contract options) be assured.

(b) When first article approval is required, it should be obtained as soon as possible and prior to expiration of backup contractual coverage.

SUBPART 8.8 - ACQUISITION OF PRINTING AND RELATED SUPPLIES

8.802 Policy.

(a) Policy and procedures for the acquisition or production of printing are contained in DLAM 5330.1, Procurement and Production of Printing, Duplicating, Micropublishing and Office Copying.

SUBPART 8.70 - COORDINATED ACQUISITION

8.7002 Assignment authority.

(a)(4) Exclusions to Defense Logistics Agency or General Services Administration Assignments by Agreement. All proposed agreements in accordance with DFARS 208.7002(a)(4) to permit a Military Service to acquire Military Service-managed items for which the estimated obligation of a one-time authorization will exceed \$100,000 or when the annual obligations are expected to exceed \$100,000 for a continuing authorization shall be submitted for review and approval by HQ DLA, ATTN: MMPPP prior to consummation of the agreement. Continuing authorizations will not be granted for periods exceeding 12 months notwithstanding the amount of estimated annual obligations. Requests shall be submitted by letter in sufficient detail to support the proposed agreement and shall be signed at a level no lower than the Chief of the Contracting Office.

8.7002-2 Requiring department responsibilities.

(a) Requisitions for metalworking machinery in FSG 34 should be submitted to DSCR -JHCA to determine availability of comparable idle assets and initiation of a purchase request. Local procurement is prohibited unless a local procurement authorization request has been submitted to and approved by DSCR-JHCA.

8.7004 Procedures.

8.7004-2 Acceptance by acquiring department.

(a) Upon receipt, MIPRs and other requests for non -DLA managed items should be routed directly to individuals responsible for procurement, as determined appropriate locally, for processing. Simultaneously, such requests will be routed for review by staff elements with corollary interest (operational, functional or policy-type offices having oversight responsibility for technical/quality issues) as necessary. Prior to required 30 -day acceptance of the MIPR, the contracting officer or designated acceptance official shall request that reviewing elements furnish comments within 10 days. The acceptance official will act as the team leader to obtain any necessary advice and counsel from local experts in order to successfully accomplish the acquisition mission.

(90) Each procurement, whether covering a Military Service -managed or DLA-managed item, will take its priority position based on the factors surrounding the particular procurement and not on the type of item or origin of the purchase request.

8.7004-3 Use of advance MIPRs.

(f) Under the provisions of DFARS 208.7004 -3, the following actions may be taken by a DSC upon receipt of an Advance MIPR (or similar type purchase request) provided the purchase request contains a statement reading essentially as follows: "A firm requirement exists for the item(s) contained in this MIPR; purchase of the items will be supported by the commitment of funds which are expected to be made available (within the next *** days)/(prior to the end of this fiscal year)." Any other written advice from the requiring activity that the requirement is firm and that there is a reasonable expectation that funds will be made available for obligation purposes against the specific advance MIPR, may be accepted in lieu of a statement embodied in the MIPR. This advice will be used as the basis to proceed with the purchase action up to the point of award.

(1) Invitation for Bids (IFBs) or Request for Proposals (RFPs) issued on the basis of unfunded Advance MIPRs shall clearly state that no awards will be made until such time as funds become available for obligation purposes. (See FAR 32.703 -2 and DFARS 232.703-2.)

(2) In instances such as those authorized herein, the requiring activity will be notified of the scheduled award date of the IFB or RFP and that, if funds are not made available by that date, the solicitation may be canceled. The scheduled award date may be extended at the discretion of the contracting office.

(3) If a requiring activity indicates that funds will not be forthcoming, the solicitation shall be canceled. All offerors shall be notified immediately of such cancellation (see FAR 14.404-3). If the solicitation is canceled prior to the solicitation opening or closing date, unopened offers shall be returned to offerors.

SUBPART 8.72 - INDUSTRIAL PREPAREDNESS PRODUCTION PLANNING

8.7201-90 Definitions.

"Industrial mobilization" means the process of marshaling the industrial sector to provide goods and services, including construction, required to support military operations and the needs of the civil sector during domestic or national security emergencies. It includes the mobilization of materials, labor, capital, facilities, and contributory items and services. Industrial mobilization may include a short surge of production or repair capability, longer term expansion of production or repair capacity, or both. Mobilization activities may result in some disruption to the national economy.

"Production Planning Schedule (PPS)" means an agreement by an industrial firm to provide production capacity data, to maintain existing capacity data for a negotiated period of time, and to accept contracts for planned items upon the request of the Government. The agreements may either be a nonbinding memorandum of understanding or a binding contract/clause.

8.7202 General.

(a)(90) The DSCs shall make plans and take actions necessary to establish and maintain a responsive industrial base required to support peacetime, surge, or wartime contingency.

8.7203 Authority.

(b)(90) In the event of a national emergency or regional contingency and selective production acceleration/expansion of the current planned producer base is required, the Executive Director,

Procurement **Management** shall notify the DSCs regarding availability and use of appropriate emergency contracting authorities. This includes expediting contracting actions through use of existing valid clauses or the standby letter contracts contained in the Industrial Preparedness (IP) planning packages.

8.7204 Procedures.

8.7204-90 Industrial preparedness (IP) planning packages.

DSCs shall develop and maintain IP planning packages (IP plans and standby letter contracts) for planned items in order to respond quickly to a national emergency or contingency. IP planning staffs shall ensure that appropriate contracting personnel are familiar with the objectives of the Industrial Base Program and IP planning, and are aware of the existence and utility of the IP planning packages. These packages will contain as much additional information as is necessary to allow issuance of contractual documents, and tracking of production by personnel operating from Alternate Headquarters sites.

8.7204-91 Industrial preparedness (IP) plans.

IP plans shall be established and maintained for all planned items. DSCs shall ensure that plans include current data regarding item requirements, planned producers, production schedules, and production planning schedule (PPS) agreements. IP plans shall be updated or revised at least once every 2 years, or more frequently as changes warrant. Where IP plans are developed for similar items, consideration will be given to consolidating the requirements and production data for all the items scheduled with each planned producer into one IP plan. In the event a DSC desires to include classified data, HQ DLA, ATTN: MMPON, shall be advised of the necessity for such data prior to its inclusion in the plan or IP package.

8.7204-92 Production Planning Schedule (PPS) agreements.

PPS agreements are used by the Government to obtain contractor commitment to: (1) update PPS data for prime and critical subcontractors, (2) provide access to records, manufacturing process data, plants, and facilities in order to verify data, (3) maintain existing production capacity for a negotiated period of time, and (4) expeditiously initiate production of the planned item in accordance with the production planning agreement if called upon in a national emergency or regional contingency.

8.7204-93 Alternate files maintenance.

Copies of each IP package shall be furnished to the DART and DOVER emergency file repositories by 15 October of each year. Appropriate mailing addresses can be found in the Field Activity Basic Emergency Plan (FABEP). DSCs should ensure these files are kept current.

8.7204-94 Implementing IP plans.

The exercise or issuance of a contractual instrument (option clause or standby letter contract) to implement IP plans in support of an emergency, will be, to the degree necessary, to support the emergency. The standby letter contract, maintained in the IP packages, will be used as appropriate, to expand the planned producer base to meet emergency demands. Attachments, such as specifications, should be readily available to be mailed with the contract. The format of a sample standby letter contract follows:

CONTRACT NO. _____

Sir/Madam:

This letter contract, upon acceptance by your firm, will constitute a contract on the terms and conditions stated herein and signifies the intention of the Defense Logistics Agency to enter into a firm fixed-price contract with you for the delivery of the supplies and performance of the services listed on the Production Planning Schedule (PPS) agreement, which was executed on _____ in furtherance of the Industrial Base Program.

Schedule of Supplies or Services.

The supplies and services to be furnished and the time and place of delivery are as follows:

Contract for _____.

Specification Number _____.

Appropriation and other Administrative Data.

The supplies and services to be obtained under this letter contract are chargeable to the following allotments, the available balances of which are sufficient to cover the cost of _____ same.

F.O.B. _____.

Execution, Commencement of Work, and Priority Rating.

The Contractor's acceptance of this order will be indicated by signing three copies and returning the signed copies to the contracting officer not later than _____. Upon acceptance by both parties, the Contractor shall proceed with performance of the work described herein, including acquisition of necessary materials. An appropriate priority rating, in accordance with the Defense Priorities and Allocations System (DPAS) regulation and, DoDI 4400.1, Priorities and Allocations - Delegation of DO and DX Priorities and Allocations, Authorities, Rescheduling of Deliveries and Continuance of Related Manuals, will be assigned to this letter contract (FAR Subpart 12.3 and DFARS Subpart 212.3).

Priority Rating

DO or DX _____ (appropriate program code symbol). Certified for national defense use under the Regulation.

Definitization

(a) A firm fixed-price type definitive contract is contemplated. To accomplish this result, the Contractor agrees to enter into negotiation promptly with the contracting officer over the terms of a definitive contract, which will include all clauses required by the Federal Acquisition Regulations System on the date of execution of the letter contract, all clauses required by law on the date of the execution of the definitive contract, and such other clauses, terms, and conditions as may be mutually agreeable. The Contractor agrees to submit a fixed-price proposal (cost and fee proposal), and cost or pricing data supporting that proposal.

(b) The schedule for definitization of this contract is set forth below:

Target Date for Definitization. _____.

(c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date set forth in (b) above or any extension thereof by the contracting officer, the contracting officer may, with the approval of the Head of the contracting activity, determine a reasonable price or fee in accordance with Parts 15 and 31 of the FAR and Parts 215 and 231 of the DFARS, subject to appeal by the Contractor as provided in the "Disputes" clause of this contract. In any event, the Contractor shall proceed with completion of the contract, subject only to the "Limitation of Government Liability" clause. After the date of the contracting officer's determination of price or fee, the contract shall be governed by:

(i) All clauses required by the Federal Acquisition Regulations System on the date of execution of this letter contract for either a fixed-price type contract or a cost-reimbursement type contract as determined by the contracting officer under this paragraph (c);

(ii) All clauses required by law as of the date of the contracting officer's determination; and

(iii) Such other clauses, terms, and conditions as may be mutually agreed upon. To the extent consistent with the foregoing, all clauses, terms and conditions included in this letter contract except which by their nature are applicable only to a letter contract shall continue to be effective.

Limitation of Government Liability

(a) The contractor is not authorized to make expenditures or to incur obligations, in performance of this contract, which exceed _____ dollars (\$_____).

(b) The maximum amount for which the Government shall be liable if this contract is terminated is _____ dollars (\$ _____).

(c) Unless otherwise provided herein, no progress payment to the contractor will be made under this contract. The enclosed forms, with the exception of enclosure(s) _____ and clause(s) _____ are hereby incorporated into this letter contract which is entered into pursuant to 10 U.S.C. 2304(c)(3) and any required justification that has been prepared.

Sincerely,

CONTRACTING OFFICER

Accepted (date)_____

Contractor _____
(Name & Official Title) Signature